



State of West Virginia
Jim Justice
Governor

CE 2018-02

H. Wood Thrasher, Cabinet Secretary
DEPARTMENT OF COMMERCE
January 16, 2018

www.wvcommerce.org
(304) 558-2234

Rebecca L. Stepto
Executive Director
West Virginia Ethics Commission
210 Brooks Street, Suite. 300
Charleston, WV 25301

Received
JAN 19 2018
WV Ethics Commission

RE: Request for exemption from prohibition against interests in a public contract

Dear Ms. Stepto:

Please accept this letter as a formal request on behalf of the West Virginia Tourism Office¹ ("WVTO") to receive an exemption from the prohibition against interests in public contracts pursuant to West Virginia Code § 6B-2-5(d)(4). Specifically, the WVTO seeks an exemption from the West Virginia Ethics Act to allow The Greenbrier in White Sulphur Springs, WV to purchase advertising in the newly-created cooperative advertising program. As more fully set forth below, the WVTO believes that the prohibition in this context substantially interferes with the agency's core mission, creates an undue burden, and results in excessive cost to the taxpayer.

The WVTO's mission is to help build and promote a world-class tourism destination that provides jobs, stimulates investment, grows existing businesses, and promotes a positive image of West Virginia as a place to visit, go to college, live, work, and retire. As part of its mission, the WVTO is mandated to develop and implement a comprehensive tourism advertising, promotion and development strategy for West Virginia, including the requirement to "leverage funding from sources other than the state." W. Va. § Code 5B-21-4(a). To achieve this mandate, the director of the WVTO is directed to administer a cooperative advertising program² ("CAP"). See W. Va. Code § 5B-21-4(a)(4) (directing the

¹ During the 2017 regular legislative session, the legislature enacted SB 535, which reorganized the West Virginia Division of Tourism and continued it as the West Virginia Tourism Office.

² As part of the new strategy to improve tourism promotion in the West Virginia, SB 535, among other things, eliminated the Direct Advertising Grants Program (commonly referred to as "MAPP" – See 144 CSR 1 (inactive); W. Va. Code 5B-2-8 & 9 (repealed)) and created the cooperative advertising program.

executive director of the WVTO to create a “cooperative advertising program to facilitate and allow participation in the West Virginia Tourism Office’s advertising and marketing campaigns and activities. . .”).

The WVTO designed and implemented the new program during the past six months. Under CAP, non-state entities can purchase and partner with the state’s tourism funding and branding to promote their individual destinations, attractions and events through a mix of regional and local advertising opportunities. The program provides a dollar-for-dollar match and offers a variety of investment tiers. The goals of CAP³ are to increase awareness of the West Virginia brand, products and partners; create a positive shift in travelers’ attitudes and perceptions towards West Virginia; provide measurable advertising outcomes for every dollar spent; and leverage state resources and partner budgets to maximize industry’s overall economic impact for West Virginia.

The Greenbrier is critical to CAP’s success because it is one of West Virginia’s strongest and best-funded tourism assets. The exemption would allow The Greenbrier to purchase⁴ advertising as part of a statewide advertising cooperative. However, because of the prohibition against interests in public contracts, one of the state’s premier destinations will be excluded from the WVTO’s centralized advertising campaign. Moreover, the WVTO’s ability to leverage funding from source’s other than the state is reduced. This prohibition therefore substantially interferes with the agency’s statutory duties.

Unlike past programs, where the WVTO subsidized advertising for industry partners, CAP requires partners to buy into the state’s centralized advertising campaign. Under this new program, no money is given to the partners; rather, the partners provide advertising to the state to supplement its overall marketing budget. This framework is fundamentally different as it requires all advertising to align with the state’s branding strategy. In addition, the WVTO’s “call to actions⁵” will direct consumers to the WVTO’s website instead of the private company’s web site.

Furthermore, if the Greenbrier is excluded from CAP, the WVTO will not be able to showcase one of our premier attractions with the highest likelihood to attract a higher-spending demographic. Attracting a high-spending demographic was identified as a key growth opportunity the state’s economy

³ More information on CAP is available at <https://gotowv.com/industry-information/cooperative-advertising-program/>.

⁴ This activity may be no different than similar activities which enable an applicant to perform a core business function while remaining subject to oversight from the issuing state entity, such as the purchase of an alcohol and beverage license from the West Virginia Alcohol Beverage Control Administration or a casino license from the West Virginia Lottery Commission.

⁵ “Call-to-Action” is a term of art in advertising which refers to a piece of content intended to induce a viewer, reader, or listener to perform a specific act, such as “buy now” or “click here”.



in the recent WV Forward⁶ study and is a key priority in the WVTO's new advertising campaign. Limiting CAD in this manner further interferes with the WVTO's mission to create more opportunities for the state.

Tourism advertising is important because it results in an 8:1 return on investment in state and local tax revenues⁷. Research also shows that the more out-of-state visitors who vacation in a state, the more positive image the entire state receives⁸. This positive association changes the overall perception of West Virginia which helps bring more tourists, retirees, and new business opportunities to West Virginia.

To increase the return on investment, and increase competitiveness, the WVTO must increase its advertising revenues without causing an excessive cost to an already overburdened budget. The WVTO can overcome unnecessary costs by maximizing the dollar-for-dollar match under CAP. The Greenbrier is a key partner for this purpose. Without matching dollars from the Greenbrier, the WVTO will be forced to make smaller advertising buys, thus limiting the ability to compete with neighboring states for tourism opportunities.

For the reasons articulated above, the WVTO respectfully requests that the West Virginia Ethics Commission grant an exemption pursuant to West Virginia Code § 6B-2-5(d)(4) from the prohibition against interests in public contracts and allow The Greenbrier to buy into CAP. The CAP began January 1, 2018, and will run through December 31, 2018. The cooperative advertising purchases for the spring/summer are pending and will be finalized soon. Therefore, the WVTO further requests that this matter be considered at the next regularly-scheduled commission meeting.

Your attention and efforts are greatly appreciated.

Very truly yours,



Joshua L. Jarrell
Deputy Cabinet Secretary/General Counsel

⁶ West Virginia Forward is a collaboration among the West Virginia Department of Commerce which includes the WVTO, West Virginia University, and Marshall University to identify short-term, larger-scale projects that will boost West Virginia's economic development efforts. The collaboration was supported by analysis from McKinsey & Company, which was focused on how West Virginia's assets may be aligned with trending business sectors to provide potential avenues for job growth and economic stability. McKinsey & Company is a global management consulting firm that serves leading businesses, governments, non-governmental organizations, and not-for-profits. McKinsey & Company identified the type of demographic that the WVTO needs to attract to the state to best serve its mission. See pages 18-22 at for more information on WV Forward: <https://wvforward.wvu.edu/files/d/e4a11f26-158d-4a91-92f3-563bfd66b1d7/west-virginia-forward-summary-of-findings.pdf>

⁷ See Longwoods International, 2016 West Virginia Image and Advertising Accountability Research, slide 122 (<https://gotowv.com/wp-content/uploads/2018/01/WV-FY-2016-IMAGE-ROI-FINAL-1-2018.pdf>).

⁸ See *Id.* at slides 125-133.

